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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED]  
MSC 01 319 60323

Office: GARDEN CITY

Date: OCT 29 2008

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by Life Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:

**INSTRUCTIONS:**

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. You no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case. If your appeal was sustained or remanded for further action, you will be contacted.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Director, Garden City, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director denied the application because the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988 as required by section 1104(c)(2)(B) of the LIFE Act.

On appeal, counsel contended that the applicant had submitted a timely response to the notice of intent to deny that was not acknowledged by the director in the notice of denial. Counsel provided copies of supporting documents that the applicant had included with his response to the notice of intent to deny. Although counsel submitted evidence to demonstrate that the applicant had submitted a response to the notice of intent to deny as claimed, the record does not contain the applicant's original response. Therefore, the applicant's response to the notice of intent to deny shall be incorporated into the appeal.

An applicant for permanent resident status under section 1104 of the LIFE Act must establish entry into the United States before January 1, 1982 and continuous residence in the United States in an unlawful status since such date and through May 4, 1988. Section 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b).

The applicant has the burden to establish by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States under the provisions of section 212(a) of the Immigration and Nationality Act (Act), and is otherwise eligible for adjustment of status under this section. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.12(e).

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982 to May 4, 1988, the submission of any other relevant document including affidavits is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.* At 80. Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true. *Id.*

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is “probably true” or “more likely than not,” the applicant or petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421, 431 (1987) (defining “more likely than not” as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The applicant made a claim to class membership in a legalization class-action lawsuit and as such, was permitted to file a Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the Immigration and Nationality Act (Act). Subsequently, on August 15, 2001, the applicant filed his Form I-485 LIFE Act application.

In support of his claim of residence in the United States for the requisite period, the applicant submitted two employment letters, three residential leases, a letter of membership, a retail receipt, an affidavit of residence, an affidavit relating to the applicant’s purported absence from this country in 1987, and twelve original envelopes postmarked March 31, 1981, November 4, 1981, July 20, 1982, August 10, 1982, October 14, 1982, December 4, 1982, December 23, 1982, August 9, 1983, March 31, 1984, November 20, 1984, August 13, 1985, and August 1, 1987, respectively.

On January 29, 2008, the director issued a notice of intent to deny the application to the applicant for failure to submit sufficient credible evidence of his continuous unlawful residence in the United States from prior to January 1, 1982 through May 4, 1988. The applicant was granted thirty days to respond to the notice. As has been discussed above, the applicant’s response to the notice shall be incorporated into the appeal.

The director determined that the applicant failed to submit sufficient credible evidence demonstrating his residence in the United States in an unlawful status during the period in question and, therefore, denied the Form I-485 LIFE Act application on February 28, 2008.

On appeal, the applicant asserted that the affidavits and letters he had submitted were sufficient to demonstrate his residence in this country since prior to January 1, 1982. The applicant stated that he was providing additional documents as further evidence to support his claim of residence in the United States for the requisite period. The applicant included four affidavits of residence, a letter of membership, an employment letter, and a reference letter with his appeal.

During the adjudication of the applicant's appeal, information came to light that adversely affects the applicant's overall credibility as well as the credibility of his claim of residence in this country from prior to January 1, 1982 to May 4, 1988. Specifically, the applicant submitted twelve original envelopes postmarked March 31, 1981, November 4, 1981, July 20, 1982, August 10, 1982, October 14, 1982, December 4, 1982, December 23, 1982, August 9, 1983, March 31, 1984, November 20, 1984, August 13, 1985, and August 1, 1987, respectively. All twelve of these envelopes were purportedly mailed from Bangladesh to the applicant at the address he claimed to have resided from April 1981 to April 1988 at part #33 of the Form I-687 application.

A review of the *2006 Scott Standard Postage Stamp Catalogue* Volume 1 (Scott Publishing Company 2005) revealed the following:

- The envelopes postmarked January 20, 1981 and December 23, 1982, both bear three of the same postage stamps each with a value of twenty-five paisas that depict the delivery of letter by a male postal carrier to a woman. This stamp is listed at page 661 of Volume 1 of the *2006 Scott Standard Postage Stamp Catalogue* with catalogue number 238 A70. The envelopes also bear a postage stamp with a value of five takas that depicts the Khulna Post Office. This stamp is listed at page 661 of Volume 1 of the *2006 Scott Standard Postage Stamp Catalogue* with catalogue number 242A A70. The catalogue lists these stamps' date of issue as December 21, 1983.
- The envelopes postmarked November 4, 1981, July 20, 1982, August 10, 1982, October 14, 1982, and December 4, 1982, all bear a postage stamp with a value of fifty paisas that depicts a mobile post office. This stamp is listed at page 661 of Volume 1 of the *2006 Scott Standard Postage Stamp Catalogue* with catalogue number 240 A70. All of these envelopes also bear a postage stamp with a value of one taka that depicts the Kamalapur Railway Station. This stamp is listed at page 661 of Volume 1 of the *2006 Scott Standard Postage Stamp Catalogue* with catalogue number 241 A70. Finally, the envelopes contain a postage stamp with a value of five takas that depicts the Khulna Post Office. This stamp is listed at page 661 of Volume 1 of the *2006 Scott Standard Postage Stamp Catalogue* with catalogue number 242A A70. The catalogue lists all three of these stamps' date of issue as December 21, 1983.
- The envelope postmarked August 9, 1983 bears two of the same postage stamps each with a value of twenty-five paisas that depict the delivery of letter by a male postal carrier to a woman. This stamp is listed at page 661 of Volume 1 of the *2006 Scott Standard Postage Stamp Catalogue* with catalogue number 238 A70. The envelope also bears a postage stamp with a value of one taka that depicts the Kamalapur Railway Station. This stamp is listed at page 661 of Volume 1 of the *2006 Scott Standard Postage Stamp Catalogue* with catalogue number 241 A70. The envelope contains a postage stamp with a value of five takas that depicts the

Khulna Post Office. This stamp is listed at page 661 of Volume 1 of the *2006 Scott Standard Postage Stamp Catalogue* with catalogue number 242A A70. The catalogue lists all three of these stamps' date of issue as December 21, 1983.

The fact that envelopes postmarked March 31, 1981, November 4, 1981, July 20, 1982, August 10, 1982, October 14, 1982, December 4, 1982, December 23, 1982, and August 9, 1983, all bear stamps that were not issued until after the date of these postmarks establishes that the applicant utilized documents in a fraudulent manner and made material misrepresentations in an attempt to establish your residence within the United States for the requisite period. This derogatory information establishes that the applicant made material misrepresentations in asserting his claim of residence in the United States for the period in question and thus casts doubt on his eligibility for adjustment to permanent residence under the provisions of the LIFE Act. By engaging in such an action, the applicant has negated his own credibility, the credibility of his claim of continuous residence in this country for the requisite period, and the credibility of all documentation submitted in support of such claim.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The AAO issued a notice to the applicant and his attorney on September 17, 2008 informing the parties that it was the AAO's intent to dismiss the applicant's appeal based upon the fact that he utilized the postmarked envelopes cited above in a fraudulent manner and made material misrepresentations in an attempt to establish his residence within the United States for the requisite period. The parties were granted fifteen days to provide evidence to overcome, fully and persuasively, these findings.

In response, counsel submits a statement in which he asserts that the Bangladeshi stamps contained in the original envelopes provided by the applicant had all been issued in 1981 and 1982. Counsel submits pictures and descriptions of twelve Bangladeshi stamps taken from the internet website at <http://www.bdstamps.com>. While a review of this website and Volume 1 of the *2006 Scott Standard Postage Stamp Catalogue* clearly demonstrates that the stamps counsel submits were in fact issued in 1981 and 1982, none of these particular stamps are on any of the twelve original envelopes submitted by the applicant in support of his claim of residence in the United States for the period in question. These twelve original envelopes contain both in combination and singularly one or more of the following four Bangladeshi stamps: a stamp with a value of twenty-five paisas that depicts the delivery of letter by a male postal carrier to a woman, a stamp with a value of five takas that depicts the Khulna Post Office, a stamp with a value of one taka that depicts the Kamalapur Railway Station, and a stamp with a value of fifty paisas that depicts a mobile post office. Volume 1 of the *2006 Scott Standard Postage Stamp*

*Catalogue* and the website at <http://www.bdstamps.com> both list the date of issue for all four of these particular stamps as December 21, 1983.

The existence of derogatory information that establishes the applicant used postmarked envelopes in a fraudulent manner and made material misrepresentations negates the credibility of the applicant's claim of residence in this country for the requisite period, as well as the credibility of the documents submitted in support of such claim. Pursuant to 8 C.F.R. § 245a.12(e), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. The applicant has failed to submit sufficient credible documentation to meet his burden of proof in establishing that he has resided in the United States for the requisite period by a preponderance of the evidence as required under both 8 C.F.R. § 245a.12(e) and *Matter of E- M-*, 20 I&N Dec. 77 (Comm. 1989).

Given the applicant's reliance upon documents with minimal or no probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through May 4, 1988 as required under section 1104(c)(2)(B) of the LIFE Act. Because the applicant has failed to provide independent and objective evidence to overcome, fully and persuasively, our finding that he submitted falsified documents, we affirm our finding of fraud. The applicant is, therefore, ineligible for permanent resident status under section 1104 of the LIFE Act on this basis.

**ORDER:** The appeal is dismissed with a finding of fraud. This decision constitutes a final notice of ineligibility.